REPORT ON THE TERMS OF REFERENCE RESPECTING THE INQUIRY INTO CERTAIN ASPECTS OF THE SURFACE RIGHTS ACQUISITION AND COMPENSATION ACT AND THE BOARD OF ARBITRATION FOR THE PROVINCE OF SASKATCHEWAN

REPORT OF THE MINISTER OF JUSTICE
THE HONOURABLE BOB ANDREW by
MURRAY D. ACTON, Q.C.

I N D E X

	Page
Introduction	1
Terms of Reference Guidelines	4
Term of Reference No. 1	6
Term of Reference No. 2	7
Term of Reference No. 3	8
Term of Reference No. 4	12
Term of Reference No. 5	15
Term of Reference No. 6	16
Term of Reference No. 7	17
Term of Reference No. 8	18

INTRODUCTION

In October, 1987 I accepted the request of the Minister of Justice for Saskatchewan, the Honourable Bob Andrew to complete the inquiry into certain aspects of The Surface Rights Acquisition and Compensation Act (hereinafter referred to as the Act) and the Board of Arbitration (hereinafter referred to as the Board). The inquiry was commenced by the Honourable Mr. Justice Woods, formerly of the Court of Appeal for Saskatchewan. Failing health prevented Mr. Justice Woods from completing the report.

In conducting my inquiry and preparing this report, I held a number of informal meetings with surface owners and representatives of Surface Rights organizations in the Estevan-Weyburn, Gull Lake, Kindersley and Lloydminster areas. I conducted informal meetings with representatives of the Canadian Petroleum Association, the Independent Petroleum Association, the Small Explorers and Producers Association of Canada, the Canadian Association of Petroleum Landmen, and the International Right of Way Association. Additional representations were made by oil company representatives and landmen. Verbal and writtten submissions were presented by legal counsel who have appeared before the Board representing both surface owners and operators. Submissions were received from the current and past chairman of the Board and each individual member of the Board. Representations were also received from Saskatchewan Power Corporation and the Saskatchewan Department of Energy and Mines.

I had the advantage of reviewing all written submissions previously made to Mr. Justice Woods. I sat through a number of hearings. I reviewed legislation from other jursidictions. I attended a workshop on surface rights in Alberta convened by the Canadian Institute of Resources Law. I also toured oil field

installations in the Estevan-Weyburn, Gull Lake, Kindersley and Lloydminster areas of the Province.

The submissions made to me both, verbal and written, were of high quality. I wish to express my appreciation to all who made submissions or met with me particularly those who adjusted their schedule on short notice to accommodate my schedule.

The specific Terms of Reference of the inquiry and my report thereon are found in the following pages. However, before dealing specifically with each Term of Reference there are some general comments which I wish to make concerning Surface Rights legislation.

Our laws have historically accepted the fact that the registered owner of real property has the right to quiet and peaceful possession thereof without interruption or disturbance by others. It is also an accepted principle of law that the owner of mines and minerals has the exclusive right thereto, including the right of access thereto for the removal and development thereof.

It is the conflict of these two principles of law which have resulted in the necessity of developing surface rights legislation.

The purpose of Surface Rights legislation is an attempt to set down just and equitable rules of procedure and compensation for dealings between the conflicting rights of the surface owner and owner and/or operator of the mines and minerals to provide for

harmonious, or at the least, tolerable co-existence, with appropriate compensation to the surface owner or occupant for disturbance or inconvenience occasioned by the exercise of the rights of the mineral owner or operator.

At times it may seem difficult if not impossible to reconcile these various rights, needs and co-existence.

This area of the law in Saskatchewan was dealt with in depth by Judge J.E. Friesen in his report of the Royal Commission on Surface Rights and Pipeline Easements in November of 1966, which is the foundation for the present Saskatchewan legislation.

The present Saskatchewan legislation in the form of The Surface Rights Acquisition and Compensation Act and The Pipeline Act are well thought out legislation and the basis on which the terms of reference of this report are founded.

I found the legislation to be solid. However, due to the speed with which life changes the present legislation needs updating to bring it up to speed with technological advances in the petroleum and natural gas industry, present farming practices and changing social and environmental attitudes in Saskatchewan.

With all of these in mind I have dealt with the specific terms of reference in this my report to the Minister of Justice.

TERMS OF REFERENCE RESPECTING THE INQUIRY INTO CERTAIN ASPECTS OF THE SURFACE RIGHTS ACQUISITION AND COMPENSATION ACT AND THE BOARD OF ARBITRATION

1. Inquire into the practice and procedure of and before the Board of Arbitration with respect to applications, hearings and all other steps had or taken by or before the Board of Arbitration. Recommend to the Minister of Justice rules of practice and procedure in this respect if such rules are considered necessary.

2. Inquire into the matter of ancillary machinery, equipment and apparatus to be placed on a well-site for the purpose of drilling for, producing or recovering a mineral. Recommend to the Minister of Justice a list, or a description or identification of a class, or such machinery, equipment and apparatus for the purposes of the Act.

3. Review sections 29 and 47 of the Act which direct the Board of Arbitration to take into consideration certain specified matters when determining compensation to be paid for surface rights granted by the Board.

   Recommend to the Minister of Justice amendments to these sections if amendments are considered advisable in light of present farming and oil field practices.

4. Review the matter of easements for power lines to service oil field facilities being placed under the Act. Recommend to the Minister of Justice amendments to the Act if such placement is considered necessary.

5. Inquire into the matter of the regulation, under the Act, of entry on private property for the carrying out of survey or seismic activities by or on behalf of operators. Report to the Minister of Justice with respect to such inquiry.

6. Inquire into the matter of the payment of an amount to the owner of land for the right to enter on such land by an operator to enjoy surface rights granted under the Act. Report to the Minister of Justice with respect to such inquiry.

7. Inquire into the matter of regulating, by licensing and bonding requirements under the Act, of persons who negotiate for or acquire surface rights from an owner of land for use by an operator for the drilling for, producing or recovering of a mineral. Report to the Minister with respect to such inquiry.

8. Inquire into, and report to the Minister of Justice respecting any other matter concerning the Board of Arbitration and The Surface Rights Acquisition and Compensation Act as Mr. Acton considers necessary or appropriate.

TERM OF REFERENCE NO. 1

INQUIRE INTO THE PRACTICE AND PROCEDURE OF AND BEFORE THE BOARD OF ARBITRATION WITH RESPECT TO APPLICATIONS, HEARINGS AND ALL OTHER STEPS HAD OR TAKEN BY OR BEFORE THE BOARD OF ARBITRATION. RECOMMEND TO THE MINISTER OF JUSTICE RULES OF PRACTICE AND PROCEDURE IN THIS RESPECT IF SUCH RULES ARE CONSIDERED NECESSARY.

In the course of my inquiry, I have determined one of the great advantages of the Saskatchewan Board is its ability to be flexible in its approach to cases presented. Where the surface owner and/or operator appears without the assistance of legal counsel, the Board adopts an informal approach to the arbitration. Where circumstances warrant, the Board elicits the facts and arguments of the participants. In cases where the surface owner and operator appear represented by legal counsel, the hearing can be conducted with a considerable amount of formality and sophistication.

This ability to be flexible should be maintained and promoted. To establish practice and procedural guidelines beyond those already in place would unduly restrict the Board. I would, however, recommend that the Board adopt a policy of having all oral evidence presented under oath to emphasize the necessity of receiving accurate and honest testimony.

TERM OF REFERENCE NO. 2

INQUIRE INTO THE MATTER OF ANCILLARY MACHINERY, EQUIPMENT AND APPARATUS TO BE PLACED ON A WELL-SITE FOR THE PURPOSE OF DRILLING FOR, PRODUCING OR RECOVERING A MINERAL. RECOMMEND TO THE MINISTER OF JUSTICE A LIST, OR A DESCRIPTION OR IDENTIFICATION OF A CLASS, OR SUCH MACHINERY, EQUIPMENT AND APPARATUS FOR THE PURPOSE OF THE ACT.

Both surface owners and operators are content to leave the Act as it now stands without listing the ancillary machinery, equipment and apparatus to be placed on the well-site.

The operators wish to have the flexibility to place whatever additional ancillary machinery equipment and apparatus is required for their purposes on the well-site. The operator would then negotiate with the surface owner concerning such additional equipment.

Any list or description of the machinery, equipment and apparatus would serve no purpose. With the continual updating of oil industry practices and the adoption of new equipment and new methods of drilling, producing and recovery, any list prepared would be immediately outdated.

The only change I recommend under this term of reference is that section 23(b.1) be amended from "in the regulation" to "allowed by regulations under The Oil and Gas Conservation Act".

TERM OF REFERENCE NO. 3

REVIEW SECTIONS 29 AND 47 OF THE ACT WHICH DIRECT THE BOARD OF ARBITRATION TO TAKE INTO CONSIDERATION CERTAIN SPECIFIED MATTERS WHEN DETERMINING COMPENSATION TO BE PAID FOR SURFACE RIGHTS GRANTED BY THE BOARD.

RECOMMEND TO THE MINISTER OF JUSTICE AMENDMENTS TO THESE SECTIONS IF AMENDMENTS ARE CONSIDERED ADVISABLE IN LIGHT OF PRESENT FARMING AND OIL FIELD PRACTICES.

In considering this term of reference, I reviewed the Manitoba, Saskatchewan, Alberta and British Columbia legislation, placing particular emphasis on the Alberta act.

Compensation can be determined by one of three methods, the pattern of dealing approach, the global approach, and the four head approach.

The pattern of dealing approach recognizes that surface owners and operators negotiate many well-site leases, easements and right-of-way agreements without recourse to arbitration. The negotiations establish usual compensation for rights in the area. The Board, following this approach, would award compensation as close as possible to the average compensation paid for similar rights in the area.

The global approach calculates compensation by reference to a total award. No effort is made to allocate the award to the various factors which the surface owner should be compensated for.

The four head approach calculates compensation on the basis of the value of interest in the land obtained, inconvenience and nuisance, loss of use, and adverse effect. Compensation is awarded for all four heads in the first year. In subsequent years, only loss of use and adverse effect are compensated for.

Calculating compensation on the pattern of dealings approach may result in an award that is not fair or appropriate. If negotiations in any given area result in lower than expected compensation, a surface owner would be penalized by the compensation awarded by the Board. On the other hand, if the operator has paid increased compensation in an area (i.e. for the purpose of gaining access on short notice) the surface owner would receive a windfall in the award. Additionally, the Board would require substantially more information to determine appropriate awards under the pattern of dealings approach. This would likely require a computerized data base. In view of the inherent disadvantages of this approach, I do not consider the cost to acquire and operate the data base to be warranted.

Awards granted under the global approach prove difficult to assess. With no indication of how the ultimate award was arrived at, it is difficult to determine if such award is appropriate in the circumstances. Such an approach could also cause considerable inconsistencies among awards.

The four head approach allows for a mathematical calculation of the compensation award. It is the most accurate method of calculating compensation and its results produce the most consistency.

Saskatchewan calculates compensation on the four head approach. It is my recommendation this be continued.

I would recommend that Part IV of the Act be amended so as to cover compensation for all surface rights. This would include not only the well-site, roadway and battery site but also surveying, seismic activities, construction of well-sites and roadways, drilling of wells, construction of pipelines including flow lines, service lines and all other pipelines as defined in The Pipelines Act and power lines whether above ground or underground as may be required.

When revising Part IV of the Act it should also be noted that in the previous Act, Section 24(1) read "a sketch plan of survey attached thereto" which should be amended to read "a sketch plan or survey attached thereto".

Section 24(2) sets forth a sample consent of owner form which may be used. I recommend that the form be revised to specify the number of well heads, the number of pipelines, whether it is a battery site, recovery site and other additional permanent fixtures which may be proposed to be placed upon the site. In way the owner or occupant would have whatever additional information may be of importance to him i nmaking his decision whether or not to consent to the right requested. It is most important that an individual have all such information which may be appropriqate in the circumstances available to him at the time of consenting in order to have a valid and informed consent. In this way many of the problems which have developed between the surface owner or occupant and the operator would be avoided as it would be very clear what was the purpose of the site.

I would also recommend that this consent form certify that the owner or occupant has been advised of the address and telephone number of the nearest office of the Surface Rights Acquisition and Compensation Board of Arbitration for the Province of Saskatchewan.

I would also recommend that Section 29(1) be expanded to insure that the value of land in paragraph 29(1)(a) be based on a criteria using fair market value in the definition thereof.

I also recommend that Section 29 be expanded in respect to payment or allowance for nuisance, adverse effect or noise to include references to the operations of the owner and/or occupant of adjoining lands as well as damage to or loss of crops, pastures, fences and livestock and the environmental impact on the owners' operations in the area.

It is my intention that these and other amendments to this section of the Act be designed to consolidate all compensation matters under one part of the Act.

TERM OF REFERENCE NO. 4

REVIEW THE MATTER OF EASEMENTS FOR POWER LINES TO SERVICE OIL FIELD FACILITIES BEING PLACED UNDER THE ACT. RECOMMEND TO THE MINISTER OF JUSTICE AMENDMENTS TO THE ACT IF SUCH PLACEMENT IS CONSIDERED NECESSARY.

This term of reference caused much concern to individuals appearing before me at informal meetings. As this item was normally misread to be "Should surface owners receive annual rental compensation for power poles?", I will deal with both the term of reference as it is presented together with the additional question of annual rental compensation for power poles.

Two major types of power lines exist in Saskatchewan; those owned and controlled by Saskatchewan Power Corporation and those controlled by an operator.

Saskatchewan Power Corporation does not pay annual rental for power lines on private property. A payment is made when the original easement is obtained as well as when damages arise from the use of the easement.

Saskatchewan Power Corporation power poles have caused considerable problems and inconvenience to surface owners, especially when in the 1950's and early 1960's Sask Power lines often crisscrossed fields in order to provide electrical service through a line built in a straight line to allow for the shortest distance rather than take into consideration the inconvenience which may have been caused to surface owners.

However, the magnitude of this problem is decreasing. The life span of a power line is approximately 20 to 30 years and as these

lines are being replaced Sask Power is now replacing them with a new construction method which involves running the SPC line down the road allowance with short operator owned lines running to each side from meters on the road allowance. In this way the main power lines are on road allowances rather than across fields and the industry owned lines to the well-site are normally now being placed underground.

In addition, Sask Power has since 1983 been developing an oil field service policy respecting construction standards for underground service in the oil fields encouraging the burial of power lines from the SPC line to the well-site.

This is not to say that power lines serving the oil industry will disappear completely. Above ground lines will be required where the terrain makes buried lines impractical, and where a primary supply line is required. However, I do foresee a continual reduction in the number of power poles which will be seen in the fields in the future.

Therefore, I recommend that no annual rental payment be commenced at this time respecting power poles relating to the oil industry as a separate heading under the Act. If power poles present a particular problem in an individual circumstance the matter may be adequately dealt with under one of the headings of compensation in Section 29 of the Act.

The Act should be amended to allow for the acquisition of surface rights by the oeprator for underground and above ground power lines.

As an aside, I wish to point out that although there seems to be some opposition by land owners respecting the placing of pipelines and/or power lines under roadways to well-sites, I believe that this practice should be encouraged. If these items were spelled out as being placed under the roadway at the time of obtaining the initial lease there would not be so much concern by surface owners. Compensation would be calculated into the initial compensation package. To not mention these items at the time of negotiating the original lease leaves the surface owner with a feeling at the time of installation that he is being cheated by an operator regarding compensation for these items.

TERM OF REFERENCE NO. 5

INQUIRE INTO THE MATTER OF THE REGULATION, UNDER THE ACT, OF ENTRY ON PRIVATE PROPERTY FOR THE CARRYING OUT OF SURVEY OR SEISMIC ACTIVITIES BY OR ON BEHALF OF OPERATORS. REPORT TO THE MINISTER OF JUSTICE WITH RESPECT TO SUCH INQUIRY.

This term of reference did not create a great deal of interest or concern among those whom I met. Certain information was presented although none was received from the surveying or seismic industries.

This area is unregulated; there is no mechanism in the current Act to provide for access to private property by the surveying or seismic industries. To prevent potential problems from arising and to provide a mechanism for dealing with confrontations, I recommend that section 23 of the Act be amended to allow for applications to the Board for right of entry orders respecting survey and seismic activities.

TERM OF REFERENCE NO. 6

INQUIRE INTO THE MATTER OF THE PAYMENT OF AN AMOUNT TO THE OWNER OF LAND FOR THE RIGHT TO ENTER ON SUCH LAND BY AN OPERATOR TO ENJOY SURFACE RIGHTS GRANTED UNDER THE ACT. REPORT TO THE MINISTER OF JUSTICE WITH RESPECT TO SUCH INQUIRY.

Section 19(1) of Alberta's The Surface Rights Act requires payment of an entry fee in an amount equal to the lesser of:

(a) $5,000.00 or

(b) $500.00 per acre granted to the operator or a proportionate amount not to be less than $250.00 for the land granted to the operator if less than one acre calculated in respect of each titled unit of the owner that contains land that is granted to the operator.

These provisions create animosity and hard feelings in the oil industry with no corresponding or offsetting advantage to surface owners. Surface owners in Saskatchewan have tended to view the entry fee as a prepayment which would be deducted from future compensation resulting in no increased monetary gain to them.

Saskatchewan legislation respecting surface rights has been held in fairly high regard by both surface owners and the oil industry as being fair, equitable and workable. I see no reason to disrupt this balance by introducing a right of entry fee which has no foreseeable advantage. In consequence, I recommend the Act not be amended to provide for a right of entry fee.

TERM OF REFERENCE NO. 7

INQUIRE INTO THE MATTER OF REGULATING, BY LICENSING AND BONDING REQUIREMENTS UNDER THE ACT, OF PERSONS WHO NEGOTIATE FOR OR ACQUIRE SURFACE RIGHTS FROM AN OWNER OF LAND FOR USE BY AN OPERATOR FOR THE DRILLING FOR, PRODUCING OR RECOVERING OF A MINERAL. REPORT TO THE MINISTER WITH RESPECT TO SUCH INQUIRY.

At the present time, there is no legislation in Saskatchewan providing for the licensing of landmen engaged in surface rights activities in the Province. The majority of landmen working in Saskatchewan are from Alberta or connected with the oil industry in Alberta. These individuals would therefore be licensed under the Alberta The Land Agents Licensing Act.

Saskatchewan has enjoyed the benefit of the Alberta legislation in that the Alberta legislation has tended to maintain a higher quality of landmen in this province than would otherwise be the case. I do not, however, feel it appropriate that Saskatchewan rely on another jurisdiction to regulate landmen in this province. I therefore recommend that Saskatchewan enact legislation regulating and controlling landmen. The legislation should provide that if a landman contravenes the Act, any surface lease or other contractual arrangement negotiated by him which occurred at the time of the breach of the Act would be null and void. This would prevent the operator from benefitting from the unlawful conduct of the landmen.

I do not consider it appropriate that the licensing and bonding of landmen be in any way regulated by the Board or included in the Act. However, it may be possible to place some controls on this area of the law by inclusion of the appropriate sections in any new securities legislation being considered by the Government. Although my first choice would be a Saskatchewan Land Agents Licensing Act.

TERM OF REFERENCE NO. 8

INQUIRE INTO, AND REPORT TO THE MINISTER OF JUSTICE RESPECTING ANY OTHER MATTER CONCERNING THE BOARD OF ARBITRATION AND THE SURFACE RIGHTS ACQUISITION AND COMPENSATION ACT AS MR. ACTON CONSIDERS NECESSARY OR APPROPRIATE.

I recommend the Act be amended to accommodate the following points:

(a) Sections 31(4) and 31(7) of the Act should be amended to allow for ten days rather than seven days notice respecting an immediate right of entry application to allow sufficient time for the filing of any Notice of Objection.

(b) Section 31(7) of the Act requires a Notice of Objection to be filed at the Board of Arbitration's office at Regina, Saskatchewan. This should be amended to allow the filing of documentation at official Board offices throughout the province, which at the present time would allow filing of documentation at either Regina or Kindersley.

(c) I noted concerns of various parties respecting the adequacy of notice and whether or not individuals had in fact received notice of hearing dates and the fact that a letter was mailed by registered mail on a specific day does not ensure that it had been received by the individual prior to the hearing date. In order to ensure that all interested parties receive adequate notice of hearing dates, I recommend that the Act be amended to provide that in the event that the Board is unsure whether or not any of the parties have received written notice of the hearing that they be at liberty to contact such individual or party by telephone, telex, telegram or facsimile machine to confirm the hearing date.

(d) I also encountered the problem of notices being filed with the Board requesting a hearing, be it right of entry or rent review, which notices were subsequently withdrawn after a hearing date had been set. I recommend that the Act be amended to ensure that no notice be allowed to be withdrawn after a hearing date has been set without consent of both parties.

(e) In order not to unduly inconvenience the surface owner or occupant, I recommend the Act be amended to provide that the Board attempt to fix the place for a hearing at the urban centre nearest to the location of the land referred to in the notice. This has in the recent past been a policy procedure of the Board and I believe it so successful and so important that it should be incorporated in the Act.

(f) There have been various concerns about pipelines, flow lines and service lines and whether or not pipelines should be included within the Act.

There is no significant difference between a flow line and a service line and I therefore recommend that references to "flow line" as it appears throughout the Act be changed to "service line" and the definition of service line be amended accordingly.

I also consider the Board to be a proper arbiter of disputes involving pipelines whether the pipelines relate to the oil industry or any other services within the province. The Board of Arbitration has developed some degree in expertise and continuity in dealing with surface rights problems and I

recommend that The Pipelines Act be amended to allow this Board to arbitrate any disputes arising under that Act as well and not have the Board limited specifically to oil and gas industry related surface rights problems.

The Act should be amended in this and other ways to allow the Board to deal with not only service lines but pipelines and underground electrical cables which would result in a standardization of appropriate compensation for underground services. As stated earlier I recommend the use of well-site roadways where practicable for burial of such underground services which results in much less inconvenience to the surface owner.

(g) Section 30 of the Act requires that a copy of every agreement between an operator and a surface owner or between an operator and an occupant be filed with the Board within 30 days after the date of execution. This section is rarely complied with and generally ignored. It does not seem to be considered necessary to file a copy of negotiated agreements. Therefore, I recommend that portion of Section 30 requiring such filing be deleted.

However, if there is a particular justification for filing of the negotiated agreements of which I am not aware, then I would recommend that the Act be amended to provide that in the event the agreement is not filed it be considered voidable by the owner and/or occupant. If filing is to be a requirement then there must be a corresponding penalty for not filing, otherwise, the Section should be removed.

If agreements are filed with the Board, I recommend that a filing system be created to allow access by surface owners and operators to the files in order that they might review the compensation paid by the other operators in that area. Without the ability of the public to gain access to these records or without the Board being provided with sufficient staff and computer base to make use of the information provided in the filed agreements I see no reason to continue the practice.

(h) A practice has developed whereby surface owners sell their land but retain the right to the surface rights payment. This is a problem of major concern both to surface owners and the oil industry. These payments are then subsequently bequeathed to children in various provinces, states and countries around the world. In this situation the oil company continues to make payments but the actual occupant and now owner of the land receives none of these payments, which slowly develops animosity between the occupant and the oil company because the occupant is obtaining none of the compensation for his inconvenience.

It has been argued that the purchase price of the property was somewhat reduced because of the fact that the surface lease payments were being retained. However, I believe this would be difficult to substantiate.

In any event the entire practice has got totally out of hand and is unacceptable to land owners and operators alike. My major concern was the fact that some of these agreements have gone on for a number of years and I did not wish to

arbitrarily suggest that all payments to other than registered owners of land be discontinued immediately and payments made only to the registered owner or owner under and by virtue of an Agreement for Sale so as to cause undue hardship to an individual who may have required this additional income to live on in their old age. I would, however, recommend that an increase in compensation accrue to the actual registered owner or owner under an Agreement for Sale and/or occupant of the property only.

Costs:

(i) The question of costs is one which arose continually during this inquiry. Many surface owners felt costs were inordinately low and did not properly reflect the time and expense incurred by them. On the other hand, the operators felt that the surface owner had nothing to lose by applying to the Board as they always received costs. The operators felt this was unfair especially in circumstances where the Board award was lower than what had originally been offered to the surface owner.

I recommend that the Act be amended so as to allow the Board to award reasonable costs and expenses to any party appearing before the Board as it in its sole discretion deems appropriate.

The Board may wish to set guidelines for itself so that if an award is less than 90 percent of the offer, the owner shall pay costs, if the award is between 90 percent and 105 percent of the offer, each party pays its own costs or if the award is over 105 percent of the offer, the operator pays the

cost. The Board may also wish to establish a policy whereby if they determine one party was not acting in good faith (i.e. was using the hearing as a stalling tactic) costs be assessed against that party.

(j) Part III - Mediation Officers:
This Section should be deleted and replaced by a more realistic and up-to-date mediation service. This is consistant with the increasing use of mediation services in respect of farm debt, domestic disputes and civil proceedings.

I recommend that provision be made to allow for either side to apply to the Chairman of the Board of Arbitration for mediation prior to the filing of any notice requesting a hearing in an attempt to resolve matters prior to the setting of a hearing date. I also recommend that upon receiving notice of a request for a hearing before the Board that the Chairman may at his discretion act himself or appoint some other member of the Board to attempt to mediate the matter prior to the date set for the hearing. This would, however, require the Chairman of the Board and other members of the Board to receive some mediation training or have access to professional mediators on short notice.

(k) Quorum of the Board:
It is my recommendation that the Act be amended to provide that three Board members present at any hearing would constitute a sufficient quorum of the Board to avoid the necessity of having four or five Board members present at each hearing.

(l) Size of the Board:
There is a growing concern that the representation on the Board is one sided and is made up almost exclusively of farmers. Accordingly, I recommend that consideration be given to having the Board include not only members of the agricultural sector but also members of the oil industry, agrologists, environmentalists, financers or lawyers. Each would bring their particular expertise to assist in making a just and equitable award.

Consideration might also be given to allow the surface rights organization or an agriculturally oriented body to appoint at least one member of the Board, the organization of small operators to appoint one member, the landmen's association to appoint one member, the large oil producers to appoint one member and the Saskatchewan Department of Environment and Public Safety to appoint one member.

(m) Access to the Board to legal counsel:
It is important to allow the Board immediate access to legal counsel when required. I recommend that such be available from the Department of Justice. I would also recommend that the Department of Justice provide a seminar on general administrative law issues to the Board by way of seminar at least once per year. I believe the present Board to be of outstanding quality and ability with the dedication to fairness and justice. However, they may tend to feel somewhat overwhelmed with the problems where a little advice and reassurance from the Department of Justice respecting their quasi judicial role.

(n) Caveats:
In order to prevent caveats from cluttering up the surface owner's titles, I recommend the Act be amended to provide that surface rights payments continue until all caveats or other instruments registered against the surface title relating to the petroleum and natural gas activity thereunder be discharged.

(o) Bankruptcy of Small Independent Operators:
There is an ever increasing problem of bankruptcy of small independent operators. This results in the surface owner having a well-site on his property which is non-operational but never been formally abandoned. In the event that the surface owner should seize the well in an attempt to collect some of the arrears owing to him under a surface lease he is then subject to assuming the costs of abandonment, which presuming this well was only marginal in the first place may be totally unrealistic. The question then becomes "who shall be responsible for the clean up of the abandoned well site?".

I do not believe the surface owner should be required to assume this responsibility.

I recommend that a situation such as this be reported to the Department of Energy and Mines for the Province of Saskatchewan who should then arrange for the restoration and abandonment of the site by accessing a newly created oil and gas environmental fund. This fund would require an initial fee be assessed at the time of issuing the drilling license for each well and a subsequent fee on the assignment or transfer of ownership of a well. This fee would be paid into

the oil and gas environmental fund and retained by the provincial government exclusively for the use of the Department of Energy and Mines in restoring well-sites left abandoned but unrestored by bankrupt or insolvent oil and gas companies. However, this legislation would require that any company transferring ownership of a well shall be liable for the cost of restoration and abandonment for a specific period of years from the date of transfer of ownership, irrespective of who is the registered owner of the well-site at the time of abandonment or bankruptcy. In this way operators would not be allowed to transfer spent wells to holding companies which would then declare bankruptcy and in turn trigger a provincial government responsibility for a restoration of an abandoned site.

(p) Restoration and Reclamation:

The issue of restoration and reclamation of well-sites is an extremely important environmental issue which is significant to every resident of Saskatchewan and should not be left to an agreement between an oil company and a surface owner. I have seen situations which suggest that in the past some oil companies have paid the surface owner a lump sum rather than attempt to clean up an environmental problem. The surface owner may then sell the land and then leave the province taking the lump sum payment with him and leaving the problem behind for the community to deal with in the future. The people of Saskatchewan should not be required to leave responsibility for environmental protection standards to private industry and surface owners.

I recommend that:

(1) The lease payments must continue until the site has been restored as near as possible to its condition prior to drilling of the well or establishment of the site; and
(2) The operator has received a certificate from an environmental reclamation board or agency, possibly under the supervision of The Department of Energy and Mines or The Department of Environment and Public Safety.

This agency would also be available to give advice concerning clean up of spills and other environmental problems faced by surface owners and the oil industry during operation of well sites. I have found at present that there is considerable frustration among surface owners who do not have the expertise nor scientific knowledge respecting proper reclamation, restoration and clean up procedures and are sometimes intimidated by companies who insist that the problem has been adequately handled only to find three or five years later that this was not the case. It is therefore most important that this environmental reclamation agency have a representative in each of the petroleum and natural gas producing areas to deal with these problems.

I also see a great advantage to having this agency deal with other matters such as the disposal of contaminents and restoration and reclamation of land fill sites within our province which must be controlled and dealt with in an attempt to protect our environment.

(q) Summary:
The Surface Rights Act in Saskatchewan is a fundamentally sound piece of legislation which needs some updating most of

which is a streamlining of the Act, but with no real change in substance or procedure.

The one exception to this may be the recommendations concerning updated mediation procedures. Although there may be some initial opposition to the mediation aspects and it may even be viewed by some as a stalling tactic available to the other side I do not believe this to be a realistic argument. Mediation if used properly will solve many of the problems which otherwise appear before the Board at hearings.

I have made numerous small recommendations concerning the makeup of the Board of Arbitration including reducing the number of members present at individual hearings and increasing substantially the potential number of members on the Board. This is not meant to be a reflection on the Board or any suggestion of inability by them to handle the present situations as they arise. My finding was that the members of the Board take their responsibilities extremely seriously and work very hard to reach just and equitable decisions. Their personal integrity is beyond reproach. However, by including pipelines under the Board's jurisdiction and some amount of mediation I find advantages in increasing the size of the Board to have an injection of additional expertise and to avoid exhaustive work loads for a small Board.

In addition, the Board is designed to be a Board of Arbitration which deals with compensation, which responsibilities are well outlined in the Act and which are handled most commendably by the Board. However, with the increasing social awareness of the environmental concerns of

restoration and reclamation, issues are arising before the Board which I do not believe are within their area of expertise nor upon which they should be required to issue Board orders. The issues of environmental and social concerns should be dealt with by an appropriate agency.

The whole issue of environmental concerns was not dealt with in the previous legislation and it is my recommendation that the environmental issues of restoration, reclamation and the establishment of a board or agency for the control and supervision of environmental protection be developed.

Our petroleum and natural gas industry in Saskatchewan has matured to the point where we are now abandoning wells and closing down areas of production. Combined with social awareness of environmental issues this has resulted in an additional need for legislative controls.

The petroleum and natural gas industry and in particular the major oil companies have in many instances shown a responsible attitude in research and development of restoration and reclamation procedures. This is not to be ignored. However, it is the responsibility of the provincial government to develop appropriate environmental protection standards and enforcement proceedings legislation as it relates to the petroleum and natural gas industry and surface rights concerns in Saskatchewan.

DATED at the City of Moose Jaw, in the Province of Saskatchewan, this ____ day of _____, 1988.

MURRAY D. ACTON, Q.C.